

In the Matter of:

ALLEGED VIOLATION OF COMMISSION
REGULATION 807 KAR 5:006, SECTION 24

CASE NO. 94-417

The Commission's action followed its receipt of a Commission Staff Electrical Utility Accident Investigation Report on an incident at Kentucky Power's Big Sandy Generating Plant in which five persons were injured as a result of a sulfur dioxide release. In this Report, Commission Staff alleges that, at the time of the incident, Kentucky Power failed to follow its internal procedures for the unloading of sulfur dioxide in violation of Commission Regulation 807 KAR 5:006, Section 24, and that Kentucky Power's sulfur dioxide system is hazardous to the Big Sandy Generating Plant's operation and personnel.

On September 18, 1995, Kentucky Power moved to stay these proceedings.¹ In its motion, Kentucky Power states that the Commission proceedings would prejudice its defense of a lawsuit which one of the injured persons has brought against it.² It further states that this lawsuit may reveal additional facts which would aid the Commission in the present proceeding.

The grant or denial of a stay is a matter solely within this Commission's discretion. 2 Am.Jur.2d Administrative Law §336(1994). In rendering its decision, the Commission must consider the following factors: the length of delay requested, the possible prejudice to the moving party if denied the delay, the potential adverse effects of the delay, the public interest, and importance of testimony that may be adduced if delay is granted. Fitzhugh v. Drug Enforcement Administration, 813 F.2d 1248 (D.C. Cir. 1987); PATCO v. Federal Labor Relations Authority, 685 F.2d 547 (D.C. Cir. 1982); In re Mid-Atlantic Toyota Anti-Trust Litigation, 92 F.R.D. 358 (D.Md.1981).

Length of Delay. The length of the delay is uncertain. Kentucky Power has given no estimate of when the lawsuit may be

¹ The Commission originally ordered a hearing in this matter for February 15, 1995. At Kentucky Power's request, the Commission postponed this hearing to April 18, 1995. After an informal conference between Commission Staff and Kentucky Power, the Commission again postponed the scheduled hearing to permit settlement negotiations. On September 15, 1995, these negotiations terminated. Kentucky Power's Motion to Stay Proceedings then followed.

² Ron and Hester Oney v. Kentucky Power Company, No. 95-CI-00084 (Lawrence Cir. Ct. filed May 15, 1995).

resolved. If a protracted legal battle occurs, the Commission proceedings may be delayed for several years.

Possible Prejudice to the Moving Party. Kentucky Power fails to explain how its efforts to defend against the private lawsuit will be adversely affected by these proceedings. In previous cases involving similar circumstances, the Commission has found that no prejudice results from its proceedings.¹ Its reasoning in those cases applies to this case as well.

Potential Adverse Effects of Delay. As the proceedings could be stayed for several years, it is very likely that witnesses could relocate or their memories could fade. The Commission's ability to discern the facts will thus be lessened.

Public Interest. The public has an interest in the swift and sure enforcement of its laws. At issue in this case is the enforcement of administrative regulations designed to protect the public safety. These proceedings are the only means of enforcing

¹ In Case No. 10323, Jackson Purchase Electric Cooperative Corp. and Ballard RTCC (Sept. 13, 1988), the Commission found that its proceedings would neither result in the disclosure of material not subject to discovery under the Kentucky Rules of Civil Procedure nor impair the utilities' right to an impartial jury trial in the private lawsuit. Finding that speculation on the impact of its ultimate findings of fact on the private lawsuit was premature, the Commission noted that, while its findings might adversely affect the utilities' defense, they might also buttress it. The Commission further noted: "In either event, our findings will be made only after the utilities have had an opportunity to argue their cases, present evidence in their own behalf, and cross-examine Staff. They will be based solely on the utilities' presentation of their cases and the facts. Furthermore any findings made in this case will go to but one issue -- the utilities' compliance with Commission regulations. We will not deal with the issues of negligence, contributory negligence, proximate causation or damages" Id. at 5.

those regulations. To stay indefinitely these proceedings, effectively holding them hostage to potential civil litigation involving only private interest, runs counter to the public interest.

Importance of Testimony That May Be Adduced If Delay Is Granted. Kentucky Power has not identified any evidence which is likely to be adduced if these proceedings are stayed nor has it explained why the private lawsuit will lead to the production of evidence which cannot be uncovered through this proceeding. To the contrary, the Commission's Rules of Procedure provide adequate methods to discover the crucial facts. See 807 KAR 5:001, Section 3.

After considering all relevant factors, the Commission finds that Kentucky Power's motion should be denied.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's Motion for Stay of Proceedings is denied.

2. A hearing in this matter shall be held on January 25, 1996 at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schonkel Lane, Frankfort, Kentucky, for the purpose of hearing evidence on Kentucky Power's alleged violation of Commission Regulation 807 KAR 5:006, Section 24, and

the safety and reliability of sulfur dioxide system which is used at the Big Sandy Generating Plant.

Done at Frankfort, Kentucky, this 22nd day of November, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director